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Daily Clips

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Chemicals

Bloomberg Environment

Companies Team Up as EPA Steps Up Chemicals Scrutiny

<https://news.bloombergenvironment.com/environment-and-energy/companies-team-up-as-epa-steps-up-chemicals-scrutiny>

By Pat Rizzuto

Chemical makers are forming groups to share EPA fees or gauge how best to submit information to the agency as it decides by December which chemicals to pick for possible regulation.

Companies have recently formed eight or nine groups to address the \$1.35 million per-chemical fee manufacturers and importers will have to pay next year if their compounds get on the Environmental Protection Agency's high-priority list, according to Robert J. Simon, a vice president at the American Chemistry Council, a trade group.

For example, members of the U.S. Tire Manufacturers Association will submit safety information to the EPA on 1,3-butadiene, one of the 20 chemicals the agency may review, said Sarah Amick, vice president for environment, health, safety, and sustainability. 1,3-Butadiene is used to make synthetic rubber.

Groups also offer the chance of pooling chemical exposure and safety data, said Simon, from the ACC. Three or four more industry groups are under development.

Groups need to hash out how to divide the \$1.35 million fee—or some portion of it—among group members; how to protect the financial value of chemical safety data; and whether information submitted to the EPA could also usefully be provided to other federal agencies, state regulators, or foreign governments looking at the same chemicals, he said.

Discuss 'As Early as Possible'

"Those discussions need to start taking place as early as possible" if they haven't already, said Martha Marrapese, a partner in Wiley Rein LLP's Washington office. Marrapese advises companies that use some of the 20 chemicals the agency may tee up for close analysis.

Some U.S. chemical manufacturers are in "uncharted territory" when it comes to data compensation, in which one company pays another for the use of safety information the second company generated, Marrapese said.

Pooling data in groups is also important to identify gaps in the information the agency has about the 20 chemicals, in case companies want to conduct new studies to fill those gaps, ACC's Simon said.

The information the EPA receives over the next year will be part of a record that “sets the stage for years to come,” Marrapese said. Courts could also review that record if the agency gets sued for deciding a chemical seems safe enough that it doesn’t warrant a close review, or if the EPA is challenged after it concludes a chemical’s risks warrant regulation.

Among the producers or importers of the “candidate” chemicals the agency has teed up for possible scrutiny are BASF SE; Huntsman International LLC; Koch Industries, Inc.; Lanxess; the Olin Corp.; Royal Dutch Shell plc, and Solvay SA. None of the companies Bloomberg Environment called or emailed chose to share information on their participation in groups or data submission plans.

Top 20 of 40 Candidates

Before the EPA begins to examine the 20 chemicals, it must select them from a list of 40 compounds it announced in March that describes which half of the list may be a candidate for risk evaluation—and which is a lower priority for scrutiny.

The high-priority candidates consist of seven chlorinated solvents, which are used to make car parts, cosmetics, and pesticides; six phthalates, which are used to produce plastics; four flame retardants; formaldehyde; a fragrance additive; and 1,3-butadiene which is used to make synthetic rubber.

The 20 low priority candidates include solvents, food additives and flavorings, ingredients in personal care products, and chemicals with medical uses.

Comments and information on the 40 chemicals are due June 19 and the agency will announce its final decisions by Dec. 22.

But the dockets the EPA set up for the 40 chemicals don’t explain the agency’s reasons for choosing them, Marrapese said.

“That’s a disservice to the American public and industry,” she said because “people really don’t know what to provide the EPA unless they know why it chose the chemicals.”

The EPA says that information is coming. Later this summer, the agency will formally propose the 20 high priority chemicals, and will release documents at that time that will include the reasons for picking those 20 chemicals, and not the other 20, the agency told Bloomberg Environment.

Shaping Risk Evaluations

The presumption is that the EPA will choose to evaluate the risks of all 20 chemicals it listed as likely candidates, said Stephen A. Owens, a partner with Squire Patton Boggs’ Phoenix and Washington offices.

The information the agency receives this year may not affect its final choice of those 20, Owens and other industry attorneys said. But the information could shape the risk evaluation plans the agency will develop from December 2019 through June 2020, they added.

The plans, called “problem formulations,” describe the uses of a chemical the agency will review, along with potential health and environmental effects, and exposed populations. Under the law, once the EPA publishes the plans, state environmental agencies will generally be barred from regulating any chemical use the agency is examining.

The publication of the EPA’s risk evaluation plans also triggers the \$1.35 million per chemical fee. Manufacturers and importers of each compound must pay within 120 days of EPA’s problem formulation being released, according to a fee rule (RIN:2070-AK27) the agency issued last October. The fee helps defray the costs the agency incurs managing chemicals.

Owens, who oversaw the agency’s chemicals and pesticides offices during the Obama administration, said the EPA faces tight deadlines to assess the 20 chemicals. And as soon as the agency finishes one evaluation, it must jump to another.

“It will be a scramble between now and forever,” Owens said.

Climate Change

ClimateWire

White House might make federal scientists debate skeptics

<https://www.eenews.net/climatewire/stories/1060492967/search?keyword=EPA>

Scott Waldman, E&E News reporter

A White House plan to debate the accuracy of climate science has hit a snag: Mainstream scientists are unlikely to participate.

Without a credible team of researchers who accept established climate science, the idea would fall flat, according to two people involved in the discussions. To get around that challenge, top officials planning the "red team" debate have floated the idea of requiring scientists at NASA or NOAA to participate, the sources said.

Another idea would be to require the National Academy of Sciences to review and respond to the work of the team in charge of highlighting uncertainties in the research that underlies the National Climate Assessment. While the sources said the exercise could debut in the coming weeks, they also cautioned that the current state of discussions is fluid.

The effort's newest iteration is more modest than earlier proposals. Will Happer, a director on the National Security Council, had envisioned creating a rapid response team to upend the conclusions of government reports on climate change. Initial discussions considered using an executive order to create a "Presidential Committee on Climate Security."

It appears that those have been sidelined after facing pressure from within the administration, according to sources.

Among the plan's critics are deputy chief of staff Chris Liddell; Kevin Hassett, the outgoing chairman of the Council of Economic Advisers; Larry Kudlow, director of the National Economic Council; and Kelvin Droegemeier, the president's science adviser. Happer has been consulting with researchers and think tank analysts about his plan. He has conducted at least two briefings with Trump about his views of climate science, the sources said.

Happer has also briefed Jared Kushner, who is supportive of the plan, according to sources. Another White House official who has gotten behind the idea is Brooke Rollins, who served as an assistant to Trump in the Office of American Innovation and was the former head of the Texas Public Policy Foundation, which has a history of questioning climate science.

The scaled-back goal of the current plan is to provide a back-and-forth examination of climate science in which researchers who question mainstream conclusions about warming would perform equivalently with scientists representing the vast majority of experts who accept that human activity is raising temperatures. The exercise could produce a series of white papers from both sides, essentially establishing a formal record of climate contrarianism.

The papers could act as a "correction" or addendum to the National Climate Assessment released last year, according to one source.

The National Climate Assessment has been peer-reviewed and is based on the work of hundreds of studies.

Those in talks to participate as contrarians in the initiative include John Christy of the University of Alabama, Huntsville, and Judith Curry, former head of the School of Earth and Atmospheric Sciences at the Georgia Institute of Technology. A possible leader of the exercise is Paul Robinson, a former Department of Energy official who oversaw talks about nuclear weapons tests with the Soviet Union during the Cold War but who is not trained in climate science.

The effort would be a revival of the "red team, blue team" idea embraced by former EPA Administrator Scott Pruitt but that was ultimately scuttled by former White House chief of staff John Kelly.

Climate as a cause of conflict

By Sarah Cammarata and Maya Parthasarathy

CLIMATE AS A CAUSE OF CONFLICT: Climate change is likely to fuel political upheaval and intensify conflict over access to food and water, witnesses told the House Intelligence Committee today, Pro's Anthony Adragna reports. Witnesses from the State Department and the National Intelligence Council said climate change is a top priority for the intelligence community, warning that global warming will create new risks to the global economy and exacerbate existing health dangers.

"Fragile states," like those in sub-Saharan Africa and the Middle East, may not be able to adapt to the effects of climate change, according to Rod Schoonover, a senior analyst within the State Department's Bureau of Intelligence and Research. "Most countries, if not all, are already unable to fully respond to the risks posed by climate-linked hazards under present conditions."

Chairman Adam Schiff (D-Calif.) called climate change "the greatest long-term national security threat to the U.S." Meanwhile, the intelligence and military communities have long considered climate change to be a "threat multiplier," having recently raised concerns about the issue in a January report. Read the full story on POLITICO Pro's website.

AROUND THE AGENCIES

WHEELER SKIRTS SAB SCORN: EPA Administrator Andrew Wheeler committed to working more closely with EPA's Science Advisory Board, but he largely skirted around questions at today's SAB meeting about how the agency handles rule-making processes, Pro's Alex Guillén reports. Members raised concerns about EPA's recent science work, including Wheeler's decision to ask the Clean Air Advisory Committee, rather than SAB, for input on rolling back methane restrictions, as well as the agency's science transparency rule. Wheeler responded that EPA will bring rulemakings to SAB's attention earlier in the regulatory process — and that the group provides "important advice." Get the details from Pro Energy.

Energy

EnergyWire

Meet 9 state regulators who are 'shaking things up'

<https://www.eenews.net/energywire/stories/1060493467/search?keyword=EPA>

E&E News staff

The shuttering of coal plants, an aggressive push for renewables and the proliferation of electric vehicles are creating a new energy landscape in the United States.

Meet the state regulators working on the front lines.

Among those in the trenches is Brandon Presley, the newly selected chairman of the Southeast's largest state regulatory group. He's also a distant cousin of Elvis Presley and is now poised to lead the National Association of Regulatory Utility Commissioners (NARUC) (Greenwire, June 5). Presley, chairman of the Mississippi Public Service Commission, helped quash development on an experimental coal project in the Magnolia State.

Others include Wisconsin's Ellen Nowak, who is caught in a legal and political tug of war, and Arizona's Sandra Kennedy, who's pushing for a more aggressive renewable energy standard in the arid Southwest.

Regulators are deciding the fate of projects like the nation's sole nuclear project under construction and policies that affect electric cars, rooftop solar and grid modernization (Energywire, May 16).

They're either one vote on a regulatory panel or are chairing a state body and setting regulatory agendas. The uncertainty of climate change and the fate of the EPA's Clean Power Plan replacement, not to mention an accelerating push among utilities toward 100% clean energy goals, loom over their decisions.

Those decisions also are taking on more importance as Congress struggles to pass energy legislation and policymaking stalls in the nation's capital.

"In the absence of federal leadership, which is sorely lacking, the states are doing in energy and environment what states have always done in other areas, which is be the laboratories for democracy, particularly in the absence of federal action," said John Shelk, president and CEO of the Electric Power Supply Association. "This is where the action is, they're on the front lines and they're either shaking things up or helping facilitate disruptors in the market."

Significant players behind the flurry of state regulatory activity are customers — ranging from large old-line industrial and manufacturing concerns to retailers such as Walmart, technology companies like Google and Apple, governmental units, and homeowners. Those customers want to save money where they can on electric power and are demanding new technology offerings, but they're also motivated by concerns about their carbon footprints and in the case of corporations that is driven in large part by Wall Street investors.

Those drivers will be on full display when hundreds of state regulators gather in Indianapolis from July 21-24 for NARUC's four-day Summer Policy Summit, where their ideas and those of others about where industry is headed will be tested, challenged and refined.

Here are state regulators to watch:

Brandon Presley

Chairman of the Mississippi Public Service Commission, Presley's name has come up in Democratic circles for governor and U.S. senator, but he is set squarely on returning to the PSC and broadening his regulatory work nationwide.

A group of Southeast utility regulators yesterday named Presley as the next president of NARUC, the nation's most powerful group of state regulators, (Greenwire, June 5). He was chosen over a pool of veteran commissioners.

"I'm honored and ready to get to work," he said yesterday.

Presley made a name for himself as the mayor of Nettleton before becoming the youngest utility regulator in state history. He's been reelected twice and now chairs what is the only elected body in the red state of Mississippi that is majority Democrat. He is widely popular and is running unopposed for a fourth term.

Presley has leveraged the state's low income ranking and high energy usage to create new policies for energy efficiency and rooftop solar. His argument: Mississippi's residents are independent and resourceful and should be able to decide how they get and use their electricity.

Led by Presley, the Mississippi PSC sent shock waves across the Southeast in 2017 when it put the brakes on a next-generation coal plant that was being built by Southern Co.'s Mississippi Power Co. (Energywire, June 22, 2017).

Presley has been a staunch advocate for rural Mississippi and helped shepherd a bill to let the state's electric cooperatives sell broadband through the GOP-dominated Legislature. He also made rural broadband a key part of his platform as a contender for the next leader of NARUC.

Going forward, he wants to overhaul the long-term planning processes of Entergy Mississippi and Mississippi Power into one that looks at the holistic needs of the state. This will include incorporating grid modernization, advanced or "smart" meters, and rural broadband

"Are there other needs that go along with that that are economic in nature that we can roll into [a utility project]?" he said in a December 2018 interview with E&E News. "I don't want to look at any generation projects, transmission projects, any type of planning that we don't take the entire needs of the state."

Ellen Nowak

Wisconsin Public Service Commission member Nowak is a central figure in a running partisan soap opera — one that will be decided by the state's highest court

Nowak, who served on the PSC from 2011 to 2018, including several years as chairwoman, was reappointed to lead the commission by former Gov. Scott Walker (R) following his defeat in November. The Wisconsin Senate confirmed her appointment and dozens of others during a lame-duck legislative session in December.

Her second stint as chairwoman was short-lived as new Gov. Tony Evers (D) appointed new PSC member Rebecca Cameron Valcq to the position on Jan. 7. In March, Evers went a step further by rescinding 82 Walker appointments, including Nowak, who was turned away from PSC offices when she showed up for work in late March.

In April, the state Supreme Court voted 4-3 along party lines to restore the Walker appointments, including Nowak, who returned to work while the court handled a lawsuit challenging whether actions taken during the lame-duck legislative session violated the state constitution.

Nowak's role on the commission could sway state energy policy as she and fellow Walker appointee Mike Huebsch give Republicans a 2-1 majority on several key cases that go to the heart of how Wisconsin's energy transition will progress.

Those cases include an application to build a 550-megawatt natural gas plant near Lake Superior, an investigation to weigh policies and regulations concerning electric vehicles and charging infrastructure, the \$500 million Cardinal-Hickory Creek transmission line, and a We Energies request to impose so-called demand charges on its customers who generate energy with rooftop solar systems.

Samuel Randazzo

In Ohio, struggling nuclear plants and aging coal generators are seeking subsidies to avoid shutting down. Billions of dollars in new gas plant investments are flowing to take advantage of abundant shale gas. Thousands of megawatts of wind and solar are in development to help meet growing demand for clean energy.

No state is perhaps more at the center of political clashes over the U.S. energy transition. By default, so is Chairman Randazzo of the Public Utilities Commission of Ohio.

Appointed to head the seven-member PUCO by Gov. Mike DeWine (R) in February, Randazzo brings 40-plus years of experience as a utility lawyer in the Buckeye State, including as member of the commission's technical staff and an assistant Ohio attorney general.

Most recently, Randazzo represented large industrial energy consumers and actively opposed Ohio's renewable and energy efficiency standards — mandates currently on the chopping block as the state Senate weighs H.B. 6. He's also represented wind farm opponents, a point that clean energy advocates highlighted in opposing his appointment.

While Randazzo officially listed himself as an "interested party" in the debate over H.B. 6, which would provide bankrupt FirstEnergy Solutions Corp. an estimated \$150 million a year in aid for its two Ohio nuclear plants, the PUCO chairman took aim at clean energy mandates again in his testimony before legislative committees.

Just yesterday, Randazzo's prepared testimony to the state's Senate Energy and Public Utilities Committee said that Ohio's renewable energy and efficiency standards are costing consumers about \$340 million annually in compliance costs. It makes no mention of economic or environmental benefits from wind and solar energy or the fact that the law requires energy efficiency programs to produce a net benefit to consumers in terms of lower bills.

Jason Shaw

Shaw was a GOP state representative from south Georgia when now former Gov. Nathan Deal (R) tapped him to replace a retiring regulator on the Georgia Public Service Commission.

He joins the all-Republican body in a year where regulators are weighing Georgia Power's long-term energy plan, a rate case, as well as monitoring Plant Vogtle, the nation's only nuclear plant under construction. That list doesn't include a newly proposed rate increase from Atlanta Gas Light Co., which, along with Georgia Power, is owned by the energy heavyweight Southern Co.

Clean energy advocates see Shaw's newness to the commission as an opening to push renewable energy, particularly solar. South Georgia has been ripe for utility-scale solar growth because of the vast amount of land.

But Shaw may be a key to developing distributed solar throughout parts of that region, as well, because of his extensive knowledge in another area: farming. But this isn't just any old traditional crop; Shaw is one of five farmers who started Georgia Olive Farms, which harvested the first commercial crop of olives grown east of the Mississippi in 2011.

When an Atlanta solar developer testified in a recent hearing about distributed solar technologies helping the state's agriculture community, Shaw weighed in even though he's been quiet in many other public hearings this year.

Distributed solar on less-productive farmland can make family farms more profitable, the developer argued. The distributed system can work in the pockets of farmland that are less productive because farmers can't effectively farm there.

"This could be a good benefit to a landowner, I see, where they're able to get something else out of that — that infrastructure," Shaw said.

Tom Ervin

Ervin has been a South Carolina utility regulator since 2018, having been elected in what arguably was the most critical year for the Public Service Commission as it grappled with how to handle billions of dollars in costs from an abandoned nuclear construction project.

Ervin is a former state representative and judge who came to the commission when regulators were under fire from the state Legislature and the public. The PSC routinely had signed off on back-to-back rate increases to finance the V.C. Summer Nuclear Generating Station, a project jointly owned by South Carolina Electric & Gas Co. and Santee Cooper.

By the end of last year, the commission had to weigh a bid from Dominion Energy to buy SCE&G's parent, Scana Corp. Who paid for the sunk costs of V.C. Summer was a key part of that deal (Energywire, Dec. 17, 2017).

Ervin was the lone commissioner to push for the agency to find that SCE&G acted "imprudently" during portions of that project's troubled lifetime. In other words, some of the information about V.C. Summer's cost and schedule was not only inaccurate, but the utility knew it, he said.

"This order is going to have precedential value," Ervin said. "This puts all other regulated utilities on notice that we take this matter very seriously. ... [I]t lets the public know that this kind of conduct is not going to be tolerated in our future."

The commission also agreed with Ervin's proposal to cut Duke Energy Corp.'s allowed rate of return on equity to 9.5% in two recent rate cases. It was the latest example of the political shift that has taken place in the Palmetto State since the collapse of V.C. Summer.

Duke Energy formally asked this week that the commission reconsider that decision to lower its return on equity to what the utility said is the second lowest in the Southeast.

Sandra Kennedy

Kennedy is outspoken as the only Democratic member of the Arizona Corporation Commission, which regulates utility companies in Arizona.

"My role truly has been one to be an advocate for transparency, but [also] a role that protects the ratepayers because the ratepayers have truly been taken advantage of here," the commissioner and former state lawmaker told E&E News this week.

Kennedy won election to the five-member ACC last year after previously winning in 2008 and losing in 2012 and 2014. She arrived this time with sharp words for Arizona Public Service Co. (APS), saying APS should be concerned because she planned to "question everything" it does (Energywire, Jan. 15).

"She has made it clear that she intends to hold the utilities accountable, understanding that her role as a regulator is, you know, to make sure that these are not monopolies run amok," said Sandy Bahr, director of the Grand Canyon Chapter of the Sierra Club.

Bahr expressed support for Kennedy and her embrace of more renewables, even if they haven't agreed on every vote.

Kennedy pointed to APS as a factor in her past failures to return to the commission. She was part of an effort to get information from APS and its owner, Pinnacle West Capital Corp., about past spending on commission races (Energywire, April 29). Kennedy said she didn't return to the commission to be "friendly."

On the policy front, Arizona voters last year rejected a plan to boost the state's renewable portfolio standard for certain regulated utilities to 50% by 2030. Kennedy responded with a proposal at the ACC that calls for a 50% renewable standard by 2028.

It remains to be seen how the discussion will play out at the ACC. The existing renewable standard for affected utilities at the ACC is 15% by 2025.

The Arizona commission's staff is recommending that APS be required to file a rate case by the end of October. The commission also may consider action on possible electricity competition at some point.

In a statement, APS said it works with all commissioners "in an effort to advance responsible energy policy for Arizona, which includes keeping service reliable and affordable for customers" amid a move toward a cleaner energy mix.

Stephen Fischmann

Fischmann is one of four Democrats on the five-member New Mexico Public Regulation Commission after he defeated an incumbent in a primary last year.

The former state senator's voice will be important as New Mexico navigates its own energy transition.

Fischmann is the most "progressive" and the most able to lead the commission on issues tied to clean energy and reducing emissions, said Chuck Noble, an attorney for the Coalition for Clean Affordable Energy. He also will help protect customers' interests, Noble said.

Much of the electricity discussion in New Mexico revolves around coal-fired power plants and plans by the state's biggest utility to decarbonize. That comes in the context of the Energy Transition Act passed by lawmakers this year and supported by Gov. Michelle Lujan Grisham (D). The legislation touches on policies such as renewable energy standards and a planned shift away from coal.

The Public Service Co. of New Mexico (PNM), which is part of PNM Resources Inc., plans to have 100% emissions-free power by the end of 2040 (Energywire, April 23). As part of its changing mix, PNM is expected to file within about a month for the abandonment of two remaining coal-fired generating units at the San Juan power plant.

PRC members will be looking at issues surrounding financing and replacement power. Noble expressed a preference for wind, solar and storage as new options. It's possible that some parties will seek new natural gas-fired power, as well.

The PRC also is expected to review the proposed sale of El Paso Electric Co., which serves parts of New Mexico. And the PRC is facing an ongoing case involving Facebook that has raised questions about the costs of transmission expansion (Energywire, May 24).

State regulators may face issues that involve energy efficiency and electric vehicle infrastructure, too. A past campaign website from Fischmann emphasizes a consumer-first approach.

"My goal is to transform the PRC from an agency that's guided by utility interests to an agency that guides utilities in the public interest," the website says.

Abigail Anthony

Anthony is tackling one of the wonkiest but fundamentally important aspects of electric utility regulation in her role as a member of the Rhode Island Public Utilities Commission.

She has made a name among her peers as a deep thinker about how electric utilities can move from traditional cost of service regulation — where the regulator determines the total amount that must be collected in rates for the monopoly utility to recover its costs and earn a reasonable financial return.

"She's very bright on performance-based regulation, which I think is probably the most important 'bread and butter' topic in utility regulation in the 2020s," said Travis Kavulla, a onetime Montana regulator and the director of energy policy at the R Street Institute.

Anthony, 37, was named to the PUC by Gov. Gina Raimondo (D) in June 2017. With an economics doctorate, Anthony was the previously director of the Acadia Center's grid modernization and utility reform initiative and a member of the Rhode Island Energy Efficiency and Resource Management Council.

"There's a lot of eagerness for performance-based regulation from different advocates and stakeholders who are looking for ways to motivate utilities to advance the public interest," Anthony said. But there "hasn't been enough analytical thinking behind the general eagerness."

Anthony has been aiming to shape the discussion with a proceeding in Rhode Island looking at performance incentive mechanisms for utilities that involve both awards and penalties for achieving certain goals.

"I am trying to dig into and come up with a standard of review for performance incentive mechanisms specifically" that can help utilities make an evidentiary case before regulators, Anthony said. "Can we show with evidence how customers will benefit if we allow this incentive or this penalty for utility shareholders?"

Utilities "stand to gain money and new business by regulating based on performance," Anthony said. "By offering shareholders profit for the utility to advance carbon goals or peak demand reduction, we are allowing them to move into a market that could otherwise be served by competitive companies."

Ted Thomas

Ted Thomas, chairman of the Arkansas Public Service Commission, has put his faith in emerging electric sector technologies to help guide the policy choices that regulators face as the utility industry gets more focused on its customers.

Thomas is "a very thoughtful commissioner and leader in both Arkansas and nationally on how to make the most of technological advancement and innovation especially when it comes to distributed energy resources," said Hannah Polikov, managing director at Advanced Energy Economy.

"Technology is not a red state, blue state issue. What he's doing is completely consistent with his ideology," she added.

A conservative Republican and former prosecutor, Thomas was named PSC chairman by Gov. Asa Hutchinson (R) in January 2015.

As are other states, Arkansas is looking at how to prepare its electric customers for the penetration of distributed energy resources such as solar, battery storage, electric vehicles and smart appliances, Thomas said. They were among the technologies that the defunct Obama-era Clean Power Plan was supposed to encourage.

But Thomas knows the CPP is "one presidential election away from coming back," and he thinks Arkansas has to be ready if that happens.

Thomas said he wants consumers to "have options so if there's price shock, they can do something about it," and that means developing policies "for any conceivable technology" that may emerge as "the price winner" in the market.

"You need to knock down all the barriers to new technologies — except for one — and that's price. And then let the economics sort it out," Thomas said.

"We want to have thought about it so we're not regulating and litigating for years" while customers are "twisting in the wind and paying higher" electric bills, he added. "Even though we're a red state, that's the way we can sell [distributed energy resources] and other policies like that here."

Greenwire

GAO: Renewable fuel standard isn't cutting carbon

<https://www.eenews.net/greenwire/stories/1060500227/search?keyword=EPA>

Marc Heller, E&E News reporter

The federal renewable fuel standard isn't doing much to reduce greenhouse gas emissions, according to the investigative arm of Congress.

The Government Accountability Office said in a report requested by Sen. Jim Lankford (R-Okla.) that the RFS's heavy reliance on corn-based ethanol has prevented it from trimming greenhouse gases, since corn ethanol doesn't have as great an impact as advanced biofuels.

That takeaway reiterates GAO's prior findings that the RFS isn't likely to reach the greenhouse reductions by 2020 that the RFS law's writers envisioned. That's largely because the advanced biofuels and cellulosic ethanol markets haven't developed as fast as the authors expected.

In addition, GAO said, most corn-based ethanol plants are exempt from emissions-reducing requirements because of grandfathering provisions. Nevertheless, though many older ethanol plants were once fueled by coal, meaning greater greenhouse gas emissions, many have switched to lower-emitting natural gas, according to the report.

GAO based its findings on interviews with industry representatives. Although people who were interviewed disagreed about whether greenhouse gas emissions have fallen or climbed, they generally agreed that the effect has been limited, researchers said.

In addition, the GAO said its analysis showed gasoline prices rose in areas outside the Midwest after ethanol mandates went into effect. Prices fell in the Midwest.

The impacts of increased ethanol use aren't exclusively tied to the RFS, the GAO said, as ethanol is sold for market-oriented reasons as well.

In comments to the GAO, the Department of Agriculture took issue with the assertion that greenhouse gas effects have been limited and cited recent studies finding that ethanol reduces greenhouse gas emissions between 39% and 47% compared with gasoline on an energy-equivalent basis.

"Our scientific research and recent research by others shows significant and growing greenhouse gas benefits of corn-based ethanol and other biofuels," said USDA Chief Economist Robert Johansson in a letter to GAO.

Lankford, a critic of the RFS, has called for its repeal. In April, he and other senators wrote to EPA, asking the agency to reduce mandated ethanol levels to reflect "market realities," saying falling demand for gasoline overall has made ethanol a bigger part of the market than Congress intended.

EPA Officials

Greenwire

Acting head named for congressional office

<https://www.eenews.net/greenwire/stories/1060500387/search?keyword=EPA>

Kevin Bogardus, E&E News reporter

EPA has shifted around some of its top officials to help fill out its congressional affairs office.

Joe Brazauskas has been named acting associate administrator of EPA's Office of Congressional and Intergovernmental Relations, sources told E&E News.

Brazauskas is an associate deputy general counsel in EPA's Office of General Counsel where he handled the legal office's congressional and Freedom of Information Act matters. He joined the agency last year from Capitol Hill, where he had served as staff director and senior counsel on the Environment Subcommittee for the House Science, Space and Technology panel (Greenwire, Sept. 14, 2018).

EPA press officials didn't respond to a request for comment from E&E News.

EPA's congressional office, a key component in the agency's response to aggressive oversight from the Democratic-controlled House, has been in a state of flux.

Troy Lyons, who has been head of the office at EPA since the early days of the Trump administrations, is leaving the agency today, according to his resignation letter. Deputies to Lyons in the legislative shop, Christian Palich and Aaron Ringel, have already left the agency in recent months.

Other EPA officials, however, have stepped in to handle the agency's relationship with Capitol Hill.

Travis Voyles is a deputy associate administrator in the congressional office. He joined EPA in December last year and is another House Science Committee alumnus, according to his LinkedIn profile.

Also based in the office, Tony Frye is director of Senate affairs, while Christian Rodrick is director of House relations.

Greenwire

New head of 'Lean' office selected

<https://www.eenews.net/greenwire/stories/1060500169/search?keyword=EPA>

Kevin Bogardus, E&E News reporter

EPA has a new director of its office to streamline agency operations.

Stefan Martiyan has been head of EPA's Office of Continuous Improvement since April, according to an internal update obtained by E&E News.

Before joining the office, Martiyan was a branch chief in the agency's Office of Acquisition Solutions. He is an EPA Lean Management System, or ELMS, champion, adhering to a system of management principles to make processes quicker and more effective that has been pushed by the Trump administration at the agency.

Martiyan has served 10 years in the federal government, including a stint at the Department of Defense. Prior to joining the civil service, he was a manager of a private English language school in China.

Martijan has a bachelor's degree in business finance from the University of Maryland and a master's certificate in government contracting from George Washington University.

Former EPA Administrator Scott Pruitt announced the creation of the Office of Continuous Improvement in May 2018. It's located in EPA's Office of the Administrator and handles implementation of the Lean system across the agency.

The office's first director, Serena McIlwain, left the agency at the end of March. She joined California Democratic Gov. Gavin Newsom's new administration as undersecretary of the California EPA (Greenwire, March 26).

Pollution

Bloomberg Environmental

EPA Science Advisers Punt on Pollution Rule Costs, Benefits

<https://news.bloombergenvironment.com/environment-and-energy/epa-science-advisers-punt-on-pollution-rule-costs-benefits>

By Abby Smith

The EPA's science advisers are postponing for now a project considering how the agency should weigh secondary health benefits of its pollution controls.

Environmental Protection Agency leadership intends soon to seek the Science Advisory Board's input on a broader push to revise the way it conducts cost-benefit reviews. A key component of this effort would include how the agency weighs co-benefits, Michael Honeycutt, the board's chair and toxicology director for the Texas Commission on Environmental Quality, said at a June 5 meeting.

Co-benefits occur where a rule that produces benefits in fulfilling its statutory purpose also generates side or ancillary benefits that weren't necessarily foreseen by the statute.

"EPA is going to bring several I think pretty significant work products to us regarding these very issues," Honeycutt said. "I think right now it's a little premature to start something when we have so many moving parts."

He told reporters after the meeting those work products would stem from EPA Administrator Andrew Wheeler's May 13 memo directing top agency officials to streamline how the EPA assesses the costs and benefits of regulation.

Members of the EPA's Science Advisory Board had proposed in May a project to explore how the agency considers co-benefits—or reductions in pollutants that aren't directly regulated—when justifying pollution controls. It would determine, among other things, what steps the EPA should take to ensure it doesn't overestimate or underestimate co-benefits, according to the project proposal.

The EPA's weighing of co-benefits has prompted criticism from industry groups, particularly in the arena of air pollution regulation, where co-benefits have made up a significant portion of some air and climate rules.

Trump EPA officials are seeking to eliminate what they have suggested is an over-reliance on co-benefits in prior regulations. The EPA is pursuing that on a number of fronts—including in revisions to Obama-era regulations like 2012 standards on mercury and air toxics from power plants and carbon dioxide emissions limits for power plants, as well as the broader changes to the EPA's cost-benefit review process.

Aim of EPA's Effort

Industry groups have praised the EPA's memo as an opportunity to realign the agency's regulatory analysis.

Wheeler's memo shouldn't "be viewed as an effort to abandon the Agency's pursuit of improved environmental outcomes—nor has API ever advocated for such a result," Ted Steichen, a senior policy adviser for the American Petroleum Institute, said in comments to the board.

He added the EPA's policy considerations "should rely on a more rational prioritization of resources that is informed by a meaningful weighing of compliance burdens against the risks," while fully considering the uncertainty of those risks.

But environmentalists and other regulatory policy experts have raised concerns that any changes to the way the EPA weighs co-benefits could significantly hamper the agency's ability to issue stricter air and climate rules

If the EPA were to eliminate consideration of co-benefits, "essentially EPA is going to be using a cost-benefit methodology that conflicts with and overrides policy decisions that are no-brainers, like regulating mercury, when it comes to science," Amit Narang, regulatory policy advocate for consumer advocacy group Public Citizen, told Bloomberg Environment.

"That absolutely should be of utmost concern to the SAB," he added.

Bloomberg Environment

Philadelphia to Pay \$8.4 Million Over Landfill Pollution Claims

<https://news.bloombergenvironment.com/environment-and-energy/philadelphia-to-pay-8-4-million-over-landfill-pollution-claims>

By Peter Hayes

Philadelphia will pay \$8.4 million to settle Superfund claims over contamination from the Clearview Landfill, according to a new filing in the Eastern District of Pennsylvania.

The city will pay \$6.54 million and the Philadelphia Redevelopment Agency another \$1.86 million to resolve liability for a portion of the site, according to the consent decree lodged June 5.

The city is liable as an owner, arranger, and transporter, and the Redevelopment Authority as an owner and operator, for a portion of the cleanup costs incurred by the Environmental Protection Agency at the site, the complaint alleges.

The landfill operated from the 1950s until the 1970s, accepting municipal, demolition and hospital wastes. Those wastes allegedly contaminated surrounding creeks and wetlands through surface erosion, runoff and seeping, according to the EPA.

An EPA investigation found the presence of polychlorinated biphenyls, polycyclic aromatic hydrocarbons, and volatile organic compounds in leachate, soil and sediments at the landfill site.

The case is assigned to Judge Michael M. Baylson.

The case is United States v. Philadelphia, E.D. Pa., No. 19-cv-02433, 6/5/19.

Bloomberg Environment

Storage Tank Lapses Alleged at 13 New York-Area Gas Stations

<https://news.bloombergenvironment.com/environment-and-energy/storage-tank-lapses-alleged-at-13-new-york-area-gas-stations>

By John Herzfeld

The owners of 13 gas stations in the Long Island and New Jersey suburbs of New York City face the possibility of multimillion-dollar civil penalties for alleged violations of environmental rules for underground storage tanks.

The Justice Department and the Environmental Protection Agency, in a complaint filed June 5 in the U.S. District Court for the Eastern District of New York, alleged that Genesis Petroleum Inc. and 20 associated companies mismanaged 38 underground storage tanks.

Leaks from underground tanks, which hold gasoline and diesel fuel, can cause serious environmental damage and are the focus of longstanding but inconsistently funded U.S. and state regulatory enforcement. The latest action follows a similar complaint against other gas station owners filed May 1 in the U.S. District Court for the Southern District of New York.

The lawsuit seeks a court order to fix the alleged problems, plus civil penalties of up to \$16,000 per tank for each day of violation. That would mean a maximum of \$608,000 per day, for violations of the Resource Conservation and Recovery Act that the government said were repeated at various times from 2012 to 2016.

Tank Visibly Corroded: U.S.

In some instances, according to the complaint, the defendants failed to secure underground storage tanks that were temporarily closed and failed to investigate or report suspected releases.

In another instance, EPA inspectors observed a visibly corroded storage tank at one of the stations. The defendants also blocked station inspections and failed to respond to requests for information, the lawsuit alleged.

The defendants created a risk of groundwater contamination, “potentially endangering the health and safety” of nearby residents, U.S. Attorney Richard P. Donoghue said in a statement. The alleged violations don’t pose an immediate threat to drinking water, he said.

Representatives of the defendants couldn’t be located to comment on the lawsuit.

The case is United States v. Genesis Petroleum Inc., E.D.N.Y., No. 19-cv-3340, 6/5/19.

The Washington Post

https://www.washingtonpost.com/opinions/pollution-knows-no-boundaries-the-trump-epa-should-stop-pretending-otherwise/2019/06/05/f92eea8c-8793-11e9-98c1-e945ae5db8fb_story.html?noredirect=on&utm_term=.9320b98a68c2

Pollution knows no boundaries. The Trump EPA should stop pretending otherwise.

By Ruth Greenspan Bell and Steven Silverman 06/05/19 3:29PM

Ruth Greenspan Bell is a public policy scholar at the Woodrow Wilson International Center for Scholars and a former assistant general counsel in the Environmental Protection Agency’s office of general counsel. Steven Silverman was an attorney in the EPA’s office of general counsel from 1980 to 2017.

In 2014, Supreme Court Justice Ruth Bader Ginsburg wrote that “air pollution is transient, heedless of state boundaries.” It may have been the case in a pre-industrialized country, when Thomas Jefferson and Alexander Hamilton were slugging it out about the relative power of states and the federal government, that pollution in one state didn’t travel that far from where it was created. But those conditions are long since history. Water may always flow downhill, but we learn more every day how animal-waste lagoons, coal-ash ponds and a variety of seemingly local pollution points find their way into adjacent and then more distant water bodies.

So it’s particularly strange that the Trump administration has taken an inconsistent and deeply cynical approach to allocating federal and state responsibilities for pollution control. When it suits its needs, the mantra becomes deference to states, apparently predicated on a rosy, 18th-century states’-rights philosophy that is completely at odds with 21st-

century science. But when states try to act in accordance with scientific reality and reduce their impact on their neighbors, suddenly, they're out of line. Just as the Trump administration has taken a heedless approach to the environment, officials are upsetting the delicate regulatory ecosystem that guaranteed all citizens a level of protection from pollution.

It hasn't always been so. Under previous Republican and Democratic administrations, the Environmental Protection Agency required coal-burning power plants in 26 states that contributed significantly to unhealthy air quality in downwind states to control their soot and smog-precursor emissions. The objective has always been to preserve the health and safety of all Americans, wherever they live.

By contrast, in the Trump era, the EPA has issued a series of rulemaking proposals that willfully ignore the harm that can be done across state borders and, as the U.S. Chamber of Commerce has crowed, truly put states in the driver's seat. An attempt to change the definition of "waters of the United States" is intended to shrink the number of waterways and bodies of water subject to regulation under the Clean Water Act. (A more expansive Obama-era definition has been tied up in court since 2015.) The Affordable Clean Energy rulemaking is an effort to repeal virtually all of the Clean Power Plan, on the grounds that it went beyond the EPA's authority. Both decisions are a shocking attempt by the EPA to define away the agency's own authority.

These rulemaking efforts are rooted in the idea that states should lead on setting regulatory standards because such decisions should be based on local knowledge and local needs. Under this theory, state government is closer to the wishes and preferences of its citizens and therefore better suited to make such decisions, though it might be wise to ask the people of Flint, Mich., how that approach worked for them.

And these changes ignore the EPA's responsibility to protect everyone's health. Doing so requires a comprehensive system, not the parochial approach of simply turning over decisions to states. Indeed, that very concern — a patchwork of approaches, some protective, others not, imposed on the reality that water bodies frequently connect — led to the 1972 Clean Water Act.

The Clean Air Act explicitly features a " 'Good Neighbor' Provision" allowing states whose clean-air objectives are thwarted by significant pollution from outside their borders to petition the EPA for a finding that another state is contributing significantly to the first state's pollution. Such a finding can trigger curtailment of those out-of-state emissions.

What makes the Trump administration's actions on the environment even more appalling is that officials' stated dedication to federalism disappears when states try to innovate in the direction of protecting their citizens and setting higher standards for environmental regulation than required by the federal government.

The current EPA is rushing to strip California and other states of their power to set tougher vehicle emission standards than the federal government, with a decision expected very soon. California has always been a leader and innovator in motor vehicle pollution control, something Congress recognized in the 1970 Clean Air Act, which made it possible for California to set high standards that other states would then be encouraged to follow. The direction the current administration is headed confounds nearly 50 years of practice.

While the Trump approach to environmental protection is rooted in hypocrisy, the balance the EPA set in previous administrations was the correct one: Every state must meet minimum standards, but there is leeway for states to test out more protective and innovative approaches. These often create pathways for broader national adoption.

The Trump administration's transparent objective in the fight with California is to thwart any attempt to deal with the scourge of climate change. Similarly, reverting to a patchwork states'-rights approach to environmental regulation makes a mockery of effective pollution control. A country that values innovation and addressing new challenges should welcome efforts by states to be labs for new approaches to solve national problems, while guaranteeing that citizens in all states receive a standard level of environmental protection. The American public deserves more than just the lowest common denominator when it comes to protecting public health.

'The cleanest air in the world'? No, Mr. President. It kills lots of Americans.

https://www.washingtonpost.com/outlook/2019/06/06/cleanest-air-world-no-mr-president-it-kills-lots-americans/?utm_term=.e9e5a493959f

By Beth Gardiner

On a stopover Wednesday in Ireland after his state visit to London, President Trump said that “we have the cleanest air in the world in the United States, and it’s gotten better since I’m president.”

Trump, who was addressing a question about his stance on climate change, is wrong on both counts. The United States ranks 10th in air quality, according to the Environmental Performance Index, a collaboration of Yale and Columbia universities and the World Economic Forum, and the latest data suggests that it’s worsening.

It’s true that the United States has far cleaner air than it did before the passage of the landmark Clean Air Act nearly 50 years ago. But in some ways, that law’s remarkable success has given Americans a false sense of complacency — not necessarily regarding climate change overall but certainly when it comes to their health. Problem solved, they can be forgiven for thinking. But research shows that the air is not nearly as clean as it needs to be and that its impact on health goes well beyond our lungs. Air pollution kills an estimated 100,000 Americans every year. As the Trump administration rolls back regulations on polluters, that figure could rise.

Rigorous science links dirty air to illness and death, but the naked eye can’t make those connections easily, and it’s usually impossible to say in any individual case that pollution is what made someone sick. This invisibility creates a political challenge for efforts to build on the Clean Air Act or push back against the administration’s efforts to ease even the current restrictions on polluters.

“You see one person run over in the street, and you’ll never forget it,” said Joseph Lyou, president of California’s Coalition for Clean Air. But thousands dying from the effects of dirty air “will never even faze you.”

The benefits of cleaning up are similarly hard to see: We never know when we don’t get sick, or don’t lose a loved one, because the air is cleaner than it would have been without effective regulation.

Dirty air is strongly linked to increased rates of heart attacks, strokes, cancer and premature birth. But there’s much more. Seventeen years ago, a neuropathologist examining the brains of puppies who had breathed Mexico City’s awful air found the same markers doctors use to diagnose Alzheimer’s disease in humans: plaques, twisted proteins and degenerating neurons. A more recent study, from 2012, showed that women in their 70s who lived with moderate pollution levels did as badly on cognitive and memory tests as they would have if they been two years older and breathing cleaner air.

But as the research on pollution’s harmful effects on health moves forward, the Trump administration is taking the United States backward. The consequences of its aggressive regulatory rollbacks, its push to cast doubt on solid science and an exodus of expertise from the Environmental Protection Agency are predictable: The Trump administration will make the country’s air dirtier. The science tells us that means more illness and more deaths.

The Clean Air Act passed the Senate unanimously in 1970 and drew just one no vote in the House. Since then, it has underpinned decades of progress. With the authority that the powerful law gave it, the EPA demanded that car companies, power plants and factories spew less pollution into our air. The slow, steady march of that regulation, grounded in science, brought dramatic improvements in air quality across the country. It is one of the world’s great environmental — and health — success stories. Cleaner air has saved millions of U.S. lives and trillions of dollars; official studies found that the law’s benefits have been dozens of times larger than its costs.

[Trump doesn’t want the public to know what government scientists are doing]

But the job is not finished. Because, as our air has gotten cleaner, scientists have learned that pollution wreaks harm on the body even at levels once thought to be safe.

The latest air-quality survey from the American Lung Association found that more than 43 percent of Americans — about 141 million people — breathe unhealthful air. Globally, air pollution cuts short about 7 million lives every year.

A vast body of evidence shows that cleaner air means better health, and longer lives. A new study in May found air-quality improvements in Southern California between 1993 and 2006 were associated with a 20 percent drop in the number of new asthma diagnoses in children.

But under the leadership of a former coal lobbyist, Andrew Wheeler, the EPA is easing rules that have forced polluters to clean up. At the same time, the agency's enforcement muscle is withering, as its scientists and health experts leave and are not replaced. The most radical element of the administration's anti-regulatory push is its effort to cast doubt on solid scientific research. Science has been the foundation of both the Clean Air Act and the EPA, providing evidence that has justified powerful health-saving regulations.

That is clearly why the Trump administration has sought to undermine it. When it comes to air pollution, the administration doesn't like the answers science is providing. So it is ditching widely accepted methodologies used to calculate cleaner air's benefits and adopting new ones that produce numbers that lowball pollution's harm, and make it easier to justify administration plans to relieve industries of the burden of complying with regulations.

[The Green New Deal isn't big enough]

History shows that to maximize profits, companies will pollute as much as we allow them to. So loosening rules and easing enforcement will inevitably mean more pollution.

Europe offers a cautionary tale. Despite its reputation for environmental progressivism, its air is significantly dirtier than United States.' The European Union lacks a strong, well-resourced enforcement agency with authority and expertise like our EPA has historically had. The Volkswagen diesel cheating scandal is a powerful case in point: The company programmed millions of cars to detect when they were being tested and then switch on pollution controls that were idle the rest of the time. While there were far more emission-evading vehicles in Europe, it took U.S. regulators to bring VW's egregious violations to light.

While the United States forced Volkswagen to pay billions of dollars in compensation and retrofit rule-breaking vehicles, Europe has been slower to respond, allowing the company to get away with cheap, ineffective software tweaks. So, across Europe, millions of diesel cars continue to pollute at levels far over the legal limit. Europeans are paying with their health and their lives.

It's a lesson Americans would do well to heed as we unravel the rules and weaken the enforcers that have delivered so much progress.

Regulation

Bloomberg Environment

Cabinet Heads, White House Gather on Pesticide Regulation Revamp

<https://news.bloombergenvironment.com/environment-and-energy/cabinet-heads-white-house-gather-on-pesticide-regulation-revamp>

By Maya Goldman

A group of agency heads and White House officials emphasized making the pesticide consultation process easier for farmers and other agricultural workers, during an inaugural working group meeting June 6.

The consultation processes outlined in the Endangered Species Act are meant to ensure that federal agencies aren't doing anything to harm endangered species when they approve and regulate pesticides.

The Interagency Endangered Species Act Working Group was created under the Agriculture Improvement Act of 2018, also known as the farm bill, to revise that process. Officials at the meeting said the current process is overly complicated and outdated, and stunts the progress of America's agricultural industry.

EPA Administrator Andrew Wheeler, Agriculture Secretary Sonny Perdue, Interior Secretary David Bernhardt, Commerce Secretary Wilbur Ross, and White House Council on Environmental Quality Chairman Mary Neumayr all gave opening remarks prior to the group's June 6 discussion, which was behind closed doors.

Perdue stressed how important it is to "get the process scientifically and legally fixed."

If it doesn't happen soon, American agricultural businesses will grow frustrated and potentially even leave the United States, he said. "We're having companies that originated in these United States threatening to move to other countries that are more accepting of these issues and these processes in order to create jobs and technology advances in other parts of the world."

As required by the farm bill, the working group will need to give its first progress update to Congress in December 2019.

Ag Help

Neumayr, representing the White House, also stated the administration's commitment to effective environmental laws that will ultimately help agricultural businesses.

"Addressing this issue has been a high priority for this administration, which is committed to supporting agricultural communities and rural prosperity," she said.

Ross, echoing a mention from Bernhardt of the intricacies of the task before the group, brought up the need for the new regulations to have a strong scientific basis.

"This is a very complex set of issues including labor instructions, actual versus authorized use, and usage data," he said. "Therefore the best science must underpin our regulatory decisions."

Conservationists Doubtful

Conservationist groups don't think the working group will do anything substantive to fix pesticide regulation—or to save endangered species.

Brett Hartl, government affairs director at the Center for Biological Diversity, said he sees the group as a way to delay any real action on pesticides.

"They don't care about solving the problem. They only care about delaying protections for endangered species so they can protect the pesticides industry," he told Bloomberg Environment.

Hartl said he wasn't impressed by the fact that so many agency and department heads attended the meeting. He said it would have been easy for them to send lower-level staffers.

The presence of cabinet officials "signifies only that this administration is totally beholden to the pesticides industry," he said.

Bloomberg Environment

Tug-Of-War Over Whether Bureau of Land Management Should Go West

<https://news.bloombergenvironment.com/environment-and-energy/tug-of-war-over-whether-bureau-of-land-management-should-go-west-52>

By Chuck McCutcheon

The Bureau of Land Management is caught in a political tug-of-war over whether all or some of the agency should relocate out West, Bobby Magill and Stephen Lee write.

Interior Secretary David Bernhardt said during his June confirmation hearing that Interior is “developing a business case for moving BLM west,” but the agency isn’t commenting further.

Proponents of the idea, such as the Western Energy Alliance, say it makes sense to have the BLM and the U.S. Geological Survey located near the people most affected by the agencies’ decisions. Sen. Cory Gardner (R-Colo.) wants the BLM’s headquarters in Grand Junction, located between Denver and Salt Lake City.

But critics such as Kit Muller, a former longtime strategic planner for the agency, say staffers would be less able to work together and prevent federal decisions from being politicized. “In part, it’s really to make the BLM less of a national presence, all told,” Muller said.

Chemical Makers Team Up

Chemical makers are forming groups to share EPA fees or gauge how best to submit information to the agency as it decides by December which substances to pick for possible regulation, Pat Rizzuto writes.

Companies have recently formed eight or nine groups to address the \$1.35 million per-chemical fee manufacturers and importers will have to pay next year if their compounds get on the Environmental Protection Agency’s high-priority list, said Robert J. Simon, a vice president at the American Chemistry Council.

An example is that members of the U.S. Tire Manufacturers Association will submit safety information to the EPA on 1,3-butadiene, one of the 20 chemicals the agency may review, said Sarah Amick, vice president for environment, health, safety, and sustainability. 1,3-Butadiene is used to make synthetic rubber.

Multi-State Commission Votes on Water Regs

The multi-state commission that imposes regional water regulations for the Ohio River is meeting to vote on whether to make those standards “optional” for the eight member states, Alex Ebert writes.

The vote could spell big changes in regulation for one of the largest and most industrially-active U.S. waterways. The Ohio River Valley Water Sanitation Commission meeting in Covington, Ky., includes representatives from Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

Activists with the National Wildlife Federation said the commission vote could create a “race to the bottom” among states relaxing permit standards for polluters along the river. At a time when the EPA is pulling back its Waters of the United States rule, environmentalists say states might not step up their scrutiny, and eventually pollution could impact a river that 5 million people depend on for drinking water.

Greenwire**Rule would ease limits on genetically modified plants**

<https://www.eenews.net/greenwire/stories/1060500125/search?keyword=EPA>

Marc Heller, E&E News reporter

The Department of Agriculture is looking to ease regulations on the release of some bioengineered plants into the environment.

Under a proposed rule published yesterday, certain types of plants would be exempt from regulations, and oversight of others that have insect-killing traits would shift from USDA to EPA.

The proposed regulations seek to resolve challenges the department has faced for several years, including regulatory weaknesses the Office of the Inspector General identified in 2015. Officials said the proposal will provide more clarity while allowing innovation in crops that can be genetically modified for various purposes, including insect resistance and the production of drugs or industrial compounds.

USDA Undersecretary for Marketing and Regulatory Programs Greg Ibach said in a news release that the proposal would allow the Animal and Plant Health Inspection Service to more precisely evaluate the risks associated with new plant introductions. It would be the first major revision to the regulations since 1987, reflecting advances in the industry.

"This commonsense approach will ultimately give farmers more choices in the field and consumers more choices at the grocery store," Ibach said.

Bioengineered crops give farmers the potential to ward off insects without as much spreading of pesticides, for instance. But the proposed rule also points to the risk that insects attracted to resistant crops might spread into neighboring areas and become serious pests, for instance.

The proposal, which is open to 60 days of public comment, would exempt genetically engineered plants that could be produced through traditional breeding. In those cases, the agency said, they "are likely to pose no greater plant pest risk than their traditionally bred comparators."

In addition, plant developers would be allowed to determine on their own whether their plants belong to a category that's exempt from the regulations. That move would allow USDA to focus on review of genetically engineered plants more likely to pose plant pest risk, the department said.

"Allowing for self-determinations would provide developers with regulatory relief and open more efficient and predictable pathways for innovators to get new modified plants that are unlikely to pose a plant pest risk to market, in turn supporting further innovation," the department said in the proposal.

Oversight of some plants that contain pesticides would fall to EPA, according to the proposal. Small-scale operations of 10 acres or less would shift to EPA oversight, and that agency would decide whether to require permits or conduct inspections of facilities. Officials intend to coordinate with EPA, according to the proposed rule.

"APHIS recognizes that there are challenges associated with such a transition that would also require EPA to incur the costs associated with setting up a revised regulatory program. Further, such a transition would require policies, procedures, and guidance regarding APHIS' interaction with EPA," APHIS said.

Officials said the proposal would advance the administration's embrace of agricultural biotechnology. The science has support in Congress, as well, where lawmakers struck a balance on labeling of food products derived from bioengineered crops, for instance.

APHIS said that as of July 2018, it has issued more than 19,500 authorizations for the environmental release of genetically engineered organisms in multiple sites, mainly for research and development of crop varieties for agriculture.

The agency said it has issued nearly 14,000 authorizations for the importation of genetically engineered organisms in that time, and more than 12,000 authorizations for the interstate movement of them. APHIS said it has denied slightly more than 1,600 requests for authorizations, many for lack of information.

The Biotechnology Innovation Organization, which supports bioengineering, praised APHIS for a "diligent approach" and said it's reviewing the proposal.

"A functional, predictable, legally defensible, and science-based regulatory infrastructure must be accompanied by credible, proactive transparency measures if we are to spur continued investment in and long-term success for the biology-driven innovations that are improving our planet, health, and food," said Dana O'Brien, executive vice president of BIO's food and agriculture section, in a statement.

Science Advisory Board

E&E News PM

Advisory panel to review 'secret science' plan

<https://www.eenews.net/eenewspm/2019/06/06/stories/1060501795>

Sean Reilly, E&E News reporter

A year after first broaching the idea, a top EPA advisory panel is poised to move ahead with an independent review of the agency's plan to restrict the use of science in crafting major new regulations.

But the Science Advisory Board faces a fresh obstacle: the calendar.

"I hope nobody has vacation plans for this summer," board Chairman Michael Honeycutt told members this morning shortly before adjourning a two-day meeting. "If you do, let's coordinate."

In a nearly unanimous vote, the 45-member panel agreed late yesterday to proceed with the review of the politically charged EPA proposal, which would bar the use of scientific studies for regulatory purposes unless the research data "are publicly available in a manner sufficient for independent validation," according to the text.

The plan has generated a torrent of opposition from the scientific community and environmental advocates, who say it's designed to stymie the use of research that might bolster the case for stronger regulations.

EPA officials are sifting through thousands of public comments on the proposed rule. They hope to hammer out a final version by December. Today, Honeycutt set an Oct. 1 turnaround time for the review, an extremely tight schedule by SAB standards. After yesterday voicing doubt about whether the panel could get the job done even by December, he sounded a more optimistic note this morning.

"We will get something out," he told reporters, while allowing that the final product "may not be as in-depth as we would like."

In interviews and during the board's deliberations this week, other board members portrayed the scrutiny as essential. "What does this rule actually mean?" Richard Smith, a biostatistics professor at the University of North Carolina, Chapel Hill, asked rhetorically. "I think a lot of us are very confused about that."

Whenever the review is completed, "we need to be sure that there's light shined on what's going to happen," said Steven Hamburg, chief scientist for the Environmental Defense Fund.

For Trump administration critics, the issue has morphed into a test of the SAB's mettle. The panel, created by Congress in 1978, is charged with advising EPA on a range of scientific and technical issues. But members said they were blindsided when EPA last spring released the proposed rule, officially billed as "Strengthening Transparency in Regulatory Science."

Then-EPA Administrator Scott Pruitt said the proposal, often labeled as a "secret science" plan after the Republican-backed legislation that inspired it, was geared to bolster confidence in the agency's decisions.

They then urged the examination of the proposal's "scientific and technical basis" in a letter to Pruitt last June. In a reply that arrived 10 months later, Pruitt's successor, Andrew Wheeler, agreed only to a "consultation" on one small facet of the proposal related to protection of trade secrets and personally identifiable information.

While the board still intends to pursue that consultation, yesterday's lopsided vote in favor of a broader assessment was notable because most members were appointed by either Pruitt or Wheeler.

The vote was "incredibly important," given the transparency proposal's implications for public health, said Chris Zarba, a former director of the SAB staff office who is now allied with the Environmental Protection Network, a group opposed to administration policies.

Board members "recognized the need, and they stepped up to it," Zarba said in an interview.

The meeting was the SAB's first full public gathering in a year. Wheeler opened it yesterday with remarks in which he pledged to fix a process he described as "broken." In an email, EPA spokesman James Hewitt said later that Wheeler was referring to the mechanisms for deciding what EPA rulemakings warrant board input. Wheeler yesterday reiterated plans to provide briefings to the board on major regulatory proposals soon after their release, along with other changes.

Asked afterward whether EPA will fully cooperate with the board's review of the transparency proposal, Hewitt offered limited assurances.

"We will do our best to work with the SAB regarding any additional requests for information within the constraints of the deliberative process and our current timeline for publication of a final rule," he said.

During this week's meeting, the board also agreed to study facets of two other EPA priorities: a proposal that incorporates a legally required review of the Obama-era Mercury and Air Toxics Standards and a planned rollback of long-term vehicle fuel efficiency and greenhouse gas standards. It struggled, however, to decide whether to tackle the Trump administration's planned rollback of clean water standards (Greenwire, June 6). For now, the board also opted to hold off on a "self-initiated" project to study EPA's use of "co-benefits" to justify new air pollution regulations.

Under a timetable set by Honeycutt, panel members have until June 26 to list priorities they think EPA should consider in overhauling its guidelines for gauging whether various environmental contaminants add to the risk of developing cancer or other diseases.

Critics have charged that the agency is attempting to rush the update. During a briefing to the board yesterday, David Bussard, co-chair of EPA's Risk Assessment Forum, said agency leaders had asked staff to get something done by this December, a schedule he described as ambitious. While there's still a desire to move forward quickly, Bussard said, there's also "a recognition that it may be important to take things in steps and to identify certain things to do before other things." A new timetable has not been announced, he said in a short interview afterward.

POLITICO Pro

EPA science advisers to weigh in on WOTUS rewrite

<https://subscriber.politicopro.com/article/2019/06/epa-science-advisers-to-weigh-in-on-wotus-rewrite-3378211>

BY ANNIE SNIDER

EPA's Science Advisory Board today voted to submit comments to Administrator Andrew Wheeler on areas where his rewrite of the Waters of the U.S. rule diverges from science.

SAB Chairman Michael Honeycutt suggested that the comments should point Wheeler to a deep dive that the SAB released in 2015 on the connections between small upstream waters and wetlands and the larger waterways covered by the Clean Water Act. But he acknowledged that EPA ultimately has to make a policy decision.

"We understand that the science has left the Clean Water Act well behind," Honeycutt said, sketching out what the SAB's commentary would cover. "You have a policy decision to make and here's where we stand on that."

EPA officials have emphasized to the board and the work group that examined the proposal that "the proposed definition of waters of the U.S. is informed but not dictated by science."

Still, the work group called out four key areas where "gaps" existed between the science and the Trump administration's proposal to significantly restrict Clean Water Act protections over streams and wetlands. Those areas include the proposal's exclusion of protections for waterways that flow only after rainfall and the role that groundwater plays in the health of surface waters.

<https://subscriber.politicopro.com/newsletters/morning-energy/2019/06/science-advisory-board-back-in-session-644058>

Science Advisory Board back in session

By Kelsey Tamborrino with help from Anthony Adragna, Annie Snider, Eric Wolff, and Alex Guillen

- PFAS and Waters of the U.S. are on the agenda for Day 2 of EPA's Science Advisory Board meeting.
- The Democratic National Committee won't hold a climate change-focused primary debate, drawing jeers from the environmental community.
- Presidential hopeful Sen. Kamala Harris will unveil legislation today that would help transition the nation's fleet of school buses to run entirely on electric power.

DRIVING THE DAY

SAB BACK IN SESSION: EPA's Science Advisory Board — the agency's panel of outside scientific experts — reconvenes today for Day 2 of its D.C. meeting focused on the agency's agenda under Administrator Andrew Wheeler. The panel will focus on two controversial topics for the agency: its PFAS Action Plan and proposed WOTUS rule.

Get ready for a rumble: The board's work group analyzing the Trump administration's rewrite of the WOTUS rule will tell the agency that there are "some gaps between science and policy that warrant review," according to a memo prepared for the meeting.

Among the scientific advisers' concerns is the administration's decision to exclude ephemeral streams from Clean Water Act protection in the proposed rule, despite findings in a 2015 EPA science report that such streams affect downstream waters. Donald van der Vaart, who was appointed to the board by former administrator Scott Pruitt, dissented from the work group's recommendation saying he agreed with EPA that the issue is one of law rather than science.

PFAS on the mind: Top staffers from EPA's drinking water and research offices will update the board on the agency's PFAS Action Plan released earlier this year, which committed to beginning work on key regulatory steps, including a drinking water limit, and advancing the scientific understanding of the chemicals. See the staffers' presentation [here](#).

— When we last left our scientists: Wheeler addressed the panel Wednesday and committed to working more closely with SAB amid heightened tensions of late. The board voted to review the science behind the Trump administration's planned rollback of vehicle emissions standards — just weeks before the agency is expected to finalize the rule, Pro's Alex Guillén reports.

CLIMATE CHANGE

DNC OPTS OUT OF CLIMATE DEBATE: The DNC has shut down any hope of holding a climate change debate, a major blow to Washington Gov. Jay Inslee, who is building his presidential campaign around the issue and had pushed for the forum.

Inslee called the decision "deeply disappointing" and out of step with Democratic primary voters, POLITICO's Anthony Adragna reports. He also said the organization threatened not to invite him to future debates if he participated in any other climate change debate.

In a statement, the DNC said climate change would remain a top priority during the debates but that it hoped to ensure "vigorous discussion" on all important issues to voters like the economy, climate change and health care.

Inslee told CNN late Wednesday: "I will tell them that what I'm hearing across the country is Democrats are insistent that we call the candidates to a higher plane of discussion of this, which was ignored for the last 20-30 years. So, I hope that they reconsider and I hope the other aspirants to this office join me, as 11 have already, to ask the DNC to reconsider this. The American people deserves this. Our party deserves this." Watch the clip [here](#).

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AROUND THE AGENCIES

UARG WITHDRAWS FROM LAWSUITS AS IT DISSOLVES: The Utility Air Regulatory Group has started withdrawing from lawsuits in the wake of last month's announcement that the industry group would dissolve. A spokeswoman for Hunton Andrews Kurth, the law firm that ran UARG, confirmed the withdrawals were part of winding down UARG's activities.

The group on Tuesday filed a motion to drop its lawsuit challenging the Obama EPA's supplemental cost finding that kept the Mercury and Air Toxics Standards in place. UARG's withdrawal is unlikely to cause any significant change as others had sued as well and EPA is reworking the underlying finding. In addition, UARG withdrew from helping to defend EPA in a legal challenge against a permitting policy change made by former Administrator Scott Pruitt.

ACE IS NIGH: EPA is finishing up the interagency review process on its final Affordable Clean Energy rule that will replace the Obama-era Clean Power Plan, Alex reports for Pros. EPA wrote in a status report filed with the D.C. Circuit Court of Appeals that it intends to take final action this month.

DOE CHANGES RADIOACTIVE WASTE RULE: The Energy Department issued a new definition of high-level nuclear waste Wednesday that could speed the cleanup of contaminated former weapons development sites, though critics called it insufficient for addressing the problem, Pro's Eric Wolff reports.

ICYMI: GAO SAYS RFS DOES NOT LOWER EMISSIONS: The Renewable Fuel Standard has failed to meaningfully lower greenhouse gas emissions, largely thanks to the failure of advanced biofuels to reach commercial scale, the Government Accountability Office said in a report this week. The RFS still relies largely on conventional corn ethanol, which has lower emissions than gasoline when burned but is produced in plants with few emissions restrictions, according to the report. Producers have been unable to make lower-emitting advanced biofuels, like ethanol produced from the husk of the corn, at commercial scale.

The report also found that gasoline blended with ethanol was cheaper in the Midwest, where transportation for ethanol is cheap, but may likely be pricier elsewhere. University of Illinois agricultural economist Scott Irwin disputed this on Twitter, noting that ethanol provides octane to gasoline in place of other, more expensive additives.

DATAPoint

THE REALITY OF DIRECT AIR CAPTURE: The idea behind direct air capture is pretty simple: Use technology to suck carbon dioxide out of the air, long after CO₂ exits a smokestack or vehicle tailpipe. But the reality is much more complex.

POLITICO Pro DataPoint's Patterson Clark breaks down the variety of processes that are being explored to capture and concentrate atmospheric carbon dioxide [here](#).

ON THE HILL

2020 BUS STOP: Sen. Harris will announce a bill today to authorize \$200 million annually from 2020-24 for the Energy Department to fund a Clean Bus Grant Program, Anthony reports. Grants of up to \$2 million would help communities swap diesel buses for electric ones, and priority would be given to lower-income students and the most polluting vehicles. Text of the legislation is [here](#) and one-pager [here](#).

TONKO: TRUMP'S CLIMATE DENIAL 'GROSS NEGLIGENCE': Rep. Paul Tonko, chairman of the Energy and Commerce Environment and Climate Change Subcommittee, bashed President Donald Trump's comments in Europe that climate change "goes both ways" in an interview with ME as indicative he "has no idea as to what he's talking about."

Tonko added: "What we have here is gross negligence on an issue that 97 percent of the world's scientists indicate is real." The New York Democrat, who backed impeachment proceedings against Trump earlier this week, pointed to the \$19 billion disaster aid bill as indicative that the costs of climate change are already mounting. "Doing nothing with

climate change will bankrupt us," Tonko said, adding that Trump's comments are "insulting to all the folks who have endured damage."

GAO OPENS RANGE OF CLIMATE STUDIES: GAO will open five studies over the next 12 months to examine the federal response to threats posed by climate change in response to requests led last month by Senate Environment and Public Works ranking member Tom Carper.

The Delaware Democrat requested in May that GAO study the threat climate change poses to nuclear waste, the treatment and disposal of hazardous materials, flood risk planning and infrastructure, U.S. energy infrastructure and chemical facilities.

A lengthy timeline: GAO responded to Carper in letters shared with ME. The agency accepted all five requests but told the senator its study into nuclear waste will be initiated in about three months; energy infrastructure in four months; flood risk infrastructure in 12 months; and hazardous materials and chemicals materials in six months.

POLITICO Pro

<https://subscriber.politicopro.com/article/2019/06/science-advisers-vote-to-review-epa-auto-rule-rollback-3373807>

Science advisers vote to review EPA auto rule rollback

By Alex Guillen

EPA's Science Advisory Board today voted to scrutinize the science behind the Trump administration's planned rollback of vehicle emissions standards, just weeks before the agency is expected to finalize the rule.

A working group formed last year to consider the matter suggested that the rulemaking should get a closer look from EPA's leading science advisory panel.

The vote coming shortly before the rule is finalized did not raise concerns among members. SAB members did complain earlier in the day that EPA was waiting too long to notify them about rulemakings in general, which Administrator Andrew Wheeler promised to improve.

SAB member John Christy of the University of Alabama in Huntsville argued that any version of the rule will have "zero effect on the climate."

"This is going to be a policy issue. There's no science in terms of its impact on the climate," said Christy, who was appointed to SAB in January by Wheeler. He has long argued that most scientists overestimate the climate's sensitivity to greenhouse gases.

Another SAB member, Steve Hamburg of the Environmental Defense Fund, quickly replied that Christy's statement is "not a consensus position." Another member, Richard Smith of the University of North Carolina at Chapel Hill, agreed.

SAB noted that while EPA may be relying in part on scientific work from the National Highway Traffic Safety Administration, the work must still meet EPA's review requirements

Sierra Club Collusion

CNN

<https://www.cnn.com/2019/06/05/politics/epa-andrew-wheeler-collusion-sierra-club/index.html>

EPA administrator says, without evidence, he sees collusion between media and Sierra Club

By Gregory Wallace

(CNN)EPA Administrator Andrew Wheeler is ratcheting up a criticism of the news media first delivered earlier this week, musing before a panel of scientists that reporters and an environmental group were "colluding" and misrepresenting his comments "for fundraising purposes."

The remarkable suggestion came without evidence, and such behavior is highly unethical in the journalism world.

Wheeler on Wednesday told the EPA's scientific advisory board, a group of approximately 40 experts from around the country who had assembled to review agency priorities, that he would "go off my script for a minute." He then revisited a criticism of environmental coverage first lobbed Monday at a National Press Club luncheon: That reporters are doing "a disservice to the American public and sound policymaking by not informing the public of the progress that this nation has made."

He took issue with a Yahoo News reporter's shorthanding of his point and with the decision of others to share that social media post. The reporter had posted a tweet that read: "'The media does a disservice to the American public' by reporting on global warming, says EPA head Andrew Wheeler. Wants more positive coverage."

"That tweet was then used as a fundraising mechanism for the Sierra Club, which really makes me wonder if the reporters from the New York Times were colluding with the Sierra Club for fundraising purposes," he claimed.

Wheeler did not explain how different people commenting separately on social media amounts to collusion. Neither the New York Times nor Sierra Club postings reference each other.

The Sierra Club turned the tables on Wheeler, who prior to his EPA appointment was a lobbyist whose clients included a major coal company. The group accused him of colluding with energy companies.

"When lives are at stake, our country cannot afford to have an EPA administrator in cahoots with corporate polluters who makes baseless accusations to cover up that reality," said Sierra Club's Maura Cowley.

One of the New York Times reporters who shared the post Kendra Pierre-Louis, later posted a clarification that included Wheeler's full quote. A spokesman for the paper declined to comment further.

The Yahoo News reporter, Alexander Nazaryan, responded to Wheeler's comments with a post of his own: "NO COLUSSION!!!!!! (sic)"

Wheeler has largely been more accessible to reporters than his predecessor at the EPA, Scott Pruitt, who took a particularly aggressive approach to dealing with the media.

Water

Greenwire

WOTUS review stumps advisers: 'The science isn't right'

<https://www.eenews.net/greenwire/stories/1060500465/search?keyword=EPA>

Ariel Wittenberg, E&E News reporter

Members of EPA's Science Advisory Board grappled with whether and how to weigh in on the Trump administration's rollback of clean water standards given the administration's insistence that the proposal is a question of policy, not science.

"They have the right to change the policy, but the science isn't right," member Robert Merritt said.

The "Waters of the U.S." proposal from EPA and the Army Corps of Engineers would erase Clean Water Act protections for wetlands without surface water connections to larger waterways and streams that only flow following rainfall. At least some federal protections for those waters have been in place since the Reagan administration.

The Science Advisory Board last addressed questions of Clean Water Act jurisdiction in 2014, reviewing and supporting a 300-page "connectivity report" describing how wetlands and small waterways can affect larger resources. The Obama administration used that report, and the board's review, as the basis for its Clean Water Rule, but the Trump administration has insisted that its rollback does not need to be based in science.

"I'll note that the proposed revised definition is a legal and policy decision that is informed by the statute, legislative history, Supreme Court interpretations and the EPA and Department of Army's respect for the traditional power of the states to regulate their inland water resources," EPA Director of Wetlands, Oceans and Watersheds John Goodin told the board today. "The line between federal and state waters is informed by, though not dictated by, science."

That left EPA's science advisers questioning how to handle the situation, particularly because the group still stands by its 2014 scientific review.

"That's what makes this tricky, because while the science hasn't changed, it doesn't seem to be entirely relevant to the way EPA is reviewing this," Deborah Hall Bennett, an SAB member and a professor in environmental health at the University of California, Davis, said of the WOTUS proposal.

A working group tasked with reviewing WOTUS acknowledged EPA's position but still determined: "In reviewing the proposed rule we find that there are some gaps between science and policy that warrant review and bridging."

Those gaps include the significant water quality and filtering benefits that wetlands and streams that flow only after rainfall can have on larger downstream waterways.

However, members of the larger board seemed unsure of what they could do, given EPA's position.

"If we consider the four questions the work group raised, then what would be the impact?" asked SAB member Sue Marty of DowDuPont Inc. "Wouldn't the policy proposal move forward because it is a policy decision?"

University of Washington environmental scientist Alison Cullen, who chaired the work group, said she wasn't sure whether the advisory board could influence an EPA policy decision but noted that the "gaps" in the WOTUS proposal are things the agencies had asked for public comment on.

"Certainly the Science Advisory Board should at least have a footing with the public comments being considered, if not hopefully a little more cachet," she said. But, she added, "I don't think we pick and choose the issues we weigh in on based on if they are going to use our science. We provide the science; we don't say, 'This is how you should use it.'"

Given that the science hadn't changed, however, SAB member Anne Smith said she wasn't sure what the board could say if it did weigh in.

"I'm perplexed by the situation we put ourselves in, because the board did a review in [2014], and I haven't heard anybody say that anything has changed," she said, suggesting that the board resubmit its approval of the connectivity report. "The difference between then and now is not about scientific information; it's about policy."

Ultimately, the board voted to write a "commentary" to EPA explaining the science at issue in the WOTUS rule, a solution proposed by the board's chair, Michael Honeycutt, of the Texas Commission on Environmental Quality.

"What I'm hearing is that the Clean Water Act says something that the science has surpassed, and we are trying to fit a square peg into a round hole," he said. "I see the position EPA is in. It's sort of like a cycle, and you're trying to draw a line of where the cycle begins, and it's very difficult to do. Your policy is drawing that line, and it's an unenviable position to be in."

Steven Hamburg, of the Environmental Defense Fund, agreed to the commentary but cautioned against "just putting a new cover letter" on old comments.

While the science hasn't changed, he said, "the context has changed."

"We need to address the new set of options that are on the table," he said.

Board members spent some time discussing the working group's recommendations for WOTUS. Those include that EPA and the Army Corps should consider the "scientific basis" for excluding ephemeral waters that flow only after rainfall and wetlands without a direct surface water connection to larger waters. The group also recommends considering "the scientific importance of groundwater protection and groundwater," noting that the WOTUS proposal would protect spring-fed creeks but not isolated waters or wetlands with shallow subsurface groundwater to larger waterways that have previously been protected.

Consultant Richard Williams asked whether those recommendations were based on how waterways are connected or "what the risk was, basically, of including or excluding it."

Hamburg explained that the analysis stuck to how wetlands and streams are connected to larger water bodies, largely because of how the Clean Water Act is framed. But he stressed the importance of not focusing on the impact one ephemeral stream or wetland might have on a larger water body.

"One might be very small, but the collective influence is very large and tends to drive the chemistry as well as the hydrology of these systems," he said.